

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

UNITED STATES OF AMERICA,)
)
 Plaintiff)
)
 v.)
)
 SHELL PIPELINE COMPANY LP fka)
 EQUILON PIPELINE COMPANY LLC)
 and OLYMPIC PIPE LINE COMPANY,)
)
 Defendants.)
 _____)

Civil Action No. CV02-1178R

**CONSENT DECREE BETWEEN THE
UNITED STATES OF AMERICA
AND OLYMPIC PIPE LINE
COMPANY**

I. BACKGROUND

A. Plaintiff, the United States of America (United States), through the Attorney General, at the request of the Administrator of the United States Environmental Protection Agency (EPA), filed a civil complaint (Complaint) against Olympic Pipe Line Company (Olympic) pursuant to the Clean Water Act (CWA), 33 U.S.C. §§ 1251-1387, seeking injunctive relief and civil penalties for the discharge of gasoline into or upon navigable waters of the United States or adjoining shorelines. The Complaint alleges that Olympic is liable for the discharge of gasoline into Hanna and Whatcom Creeks, navigable waters of the

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United States, and their adjoining shorelines, beginning on June 10, 1999, in violation of Sections 301(a) and 311(b)(3) of the CWA, 33 U.S.C. §§ 1311(a), 1321(b)(3).

B. The Parties agree that it is desirable to resolve the claims for civil penalties and injunctive relief asserted in the Complaint without resort to litigation.

C. This Consent Decree is entered into between the plaintiff and Olympic for the purpose of settlement and it does not constitute an admission or finding of any violation of federal or state law. This Decree may not be used in any civil proceeding of any type as evidence or proof of any fact or as evidence of the violation of any law, rule, regulation, or Court decision, except in a proceeding to enforce the provisions of this Decree.

D. Cooperative negotiation efforts of the United States and the State of Washington (State) resulted in settlements resolving civil liability both to the United States pursuant to the CWA and to the State pursuant to Wash. Rev. Code §§ 90.48, 90.56.

E. To resolve Olympic's civil liability for the claims asserted in the Complaint, Olympic will pay a total civil penalty of \$2.5 million to the United States, comply with the spill prevention and mitigation requirements in Appendix A at an estimated cost of approximately \$15 million, and satisfy all other terms of this Consent Decree. The United States has substantially reduced Olympic's civil penalty and agreed to a payment schedule based on financial information that Olympic provided during settlement discussions demonstrating that Olympic lacks the economic ability to pay a larger penalty.

F. To resolve civil penalty liability to the State pursuant to Wash. Rev. Code

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1 §§ 90.48, 90.56, Olympic will enter into a settlement agreement with the State
2 (State Agreement) requiring Olympic to pay a total of \$2.5 million in civil
3 penalties to the State which may include, in whole or in part, payments made for
4 State-approved expenditures for environmental projects.

5 G. The Parties agree, and this Court by entering this Consent Decree finds, that this
6 Consent Decree and these civil penalties and injunctive relief solely address the
7 acts and omissions of Olympic alleged in the Complaint and do not address the
8 alleged acts and omissions of any other person or entity.

9 H. The Parties agree, and this Court by entering this Consent Decree finds, that this
10 Consent Decree has been negotiated by the Parties in good faith, that settlement
11 of this matter will avoid further litigation between the Parties related to the claims
12 in the Complaint, and that the settlement embodied by this Consent Decree is fair,
13 reasonable, and in the public interest.

14 I. This Consent Decree constitutes the final, complete and exclusive agreement and
15 understanding among the Parties with respect to the settlement embodied in this
16 Consent Decree, and the Parties acknowledge that there are no representations,
17 agreements or understandings relating to the settlement other than those expressly
18 contained in this Consent Decree.

19 THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED,
20 ADJUDGED AND DECREED:

21 **II. JURISDICTION AND VENUE**

- 22 1. This Court has jurisdiction over the subject matter of this action and the Parties pursuant
23 to 28 U.S.C. §§ 1331, 1345, 1355, and 33 U.S.C. §§ 1319(b), 1321(b)(7)(E).
24 2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), 1395(a), and 33 U.S.C.

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1 §§ 1319(b), 1321(b)(7)(E).

- 2 3. For the purposes of this Consent Decree and the underlying claims of the United States,
3 Olympic waives all objections and defenses that it may have to jurisdiction of the Court
4 or to venue in this District. Olympic consents to and shall not challenge entry of this
5 Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

6 **III. PARTIES BOUND**

- 7 4. This Consent Decree applies to and is binding on the United States and on Olympic and
8 its successors and assigns. Any changes in Olympic's ownership or corporate status
9 shall in no way alter Olympic's responsibilities pursuant to this Consent Decree. Nor
10 shall any change in the ownership of all or a portion of the Pipeline System in any way
11 alter Olympic's responsibilities pursuant to this Consent Decree. If Olympic transfers
12 ownership of any portion of the Pipeline System to any other entity, Olympic
13 nevertheless shall fulfill all requirements of this Consent Decree regarding the portion of
14 the Pipeline System so transferred.

15 **IV. DEFINITIONS**

- 16 5. Unless otherwise expressly provided herein, the terms used in this Consent Decree that
17 are defined in the CWA, or the regulations promulgated thereunder, shall have the
18 meaning assigned to them in the CWA or in such regulations. Whenever terms listed
19 below are used in this Consent Decree or the Appendix, the following definitions shall
20 apply:

- 21 a. "Appendix" shall mean Appendix A (Spill Prevention and Mitigation
22 Requirements) attached to this Consent Decree and all Exhibits attached to
23 Appendix A.
24 b. "Consent Decree" or "Decree" shall mean this document and the Appendix. In

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the event of a conflict between this document and the Appendix, this Decree shall control.

c. "CWA" shall mean the Clean Water Act (CWA), 33 U.S.C. §§ 1251-1387.

d. "Day" shall mean a calendar day unless expressly stated to be a working day.

"Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time pursuant to this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.

e. "DOJ" shall mean the United States Department of Justice.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies.

g. "Incident" shall mean the discharge of gasoline into or upon Whatcom and Hanna Creeks and their adjoining shorelines in Bellingham, Washington, beginning on June 10, 1999, as described with particularity in the Complaint filed by the United States in this case.

h. "Independent Monitoring Contractor" shall mean the Independent Monitoring Contractor selected pursuant to Section X of the Appendix.

i. "Olympic" shall mean Olympic Pipe Line Company, one of the defendants in this action, and its successors and assigns.

j. "OPA" shall mean the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701-2761.

k. "Paragraph" shall mean a portion of this Consent Decree or the Appendix identified by an Arabic numeral.

l. "Parties" shall mean the United States and Olympic.

m. "Pipeline" shall mean all portions of the Pipeline System comprising line pipe,

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1 including all main lines, stub lines, and delivery lines.

2 n. "Pipeline System" shall mean the system owned by Olympic that is used for
3 transporting gasoline and other petroleum products and includes approximately
4 400 miles of pipeline running between Ferndale, Washington, and Portland,
5 Oregon, and associated delivery lines, stub lines, structures and buildings used
6 for operations and administration, control equipment, pumps, valves, breakout
7 tanks, storage tanks, and other equipment used in the operation of the pipeline,
8 and any additions to such Pipeline System made during the pendency of this
9 Consent Decree.

10 o. "RCRA" shall mean the Resource, Conservation and Recovery Act.

11 p. "Section" shall mean a portion of this Consent Decree and Appendix identified
12 by a capitalized Roman numeral.

13 q. "State" shall mean the State of Washington.

14 r. "State Agreement" shall mean all documents constituting or describing the
15 agreement between Olympic and the State resolving the State's civil penalty
16 claims pursuant to Wash. Rev. Code §§ 90.48 and 90.56 against Olympic related
17 to the Incident.

18 s. "Submit" shall mean any of the following: (1) place in certified mail in a
19 properly addressed envelope with sufficient postage; (2) tender to an overnight
20 courier in a properly addressed envelope, and prepay the delivery fees; or (3)
21 hand deliver and obtain signature of recipient.

22 t. "Subparagraph" shall mean a portion of this Consent Decree and Appendix
23 identified by a upper or lower case letter.

24 u. "United States" shall mean the United States of America, including its

1 departments, agencies, and instrumentalities.

2 **V. GENERAL PROVISIONS**

3 6. Compliance with Applicable Law. This Consent Decree in no way affects or relieves
4 Olympic of its responsibility to comply with applicable federal, state, and local laws,
5 regulations, and permits. Olympic shall perform all work required by this Consent
6 Decree in compliance with the requirements of all applicable federal, state, and local
7 laws, regulations, and permits. Except as expressly provided herein, the parties agree
8 that compliance with this Consent Decree shall be no defense to any actions commenced
9 by the United States or the State pursuant to federal, state, and local laws, regulations,
10 and permits. This Consent Decree is not, and shall not be construed as, a permit issued
11 pursuant to any federal, state, or local statute or regulation.

12 7. Permits. Olympic shall submit timely and complete applications for, and otherwise
13 diligently seek to obtain, any and all permits or approvals from federal, state, or other
14 governmental entities necessary to perform work that this Consent Decree requires.

15 **VI. INJUNCTIVE RELIEF**

16 8. To resolve the CWA injunctive relief claims alleged in the United States' Complaint,
17 Olympic shall comply with the requirements in the Appendix.

18 **VII. PAYMENT OF CIVIL PENALTIES**

19 9. Olympic shall pay the United States a civil penalty of \$2,500,000, payable in five
20 installments of \$500,000 each. Olympic shall pay the first installment on or before
21 February 1, 2004. Olympic shall pay the remaining four installments on or before
22 February 1 of each year from 2005 through and including 2008.

23
24 10. Olympic shall make the payments described in Paragraph 9 in the manner specified in

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Section XI (Payment and Related Matters) of this Consent Decree.

11. If any payment required by Paragraph 9 of this Decree is not paid when due, Olympic shall pay stipulated penalties in accordance with Section X (Stipulated Penalties), and interest in accordance with Section XI (Payment and Related Matters).

VIII. REPORTING REQUIREMENTS

12. Progress Reports. During the pendency of this Consent Decree Olympic shall submit certified Progress Reports to EPA and the Independent Monitoring Contractor in accordance with the requirements of this Paragraph. Additionally, if requested by EPA, Olympic shall meet with EPA to discuss Olympic's compliance with the terms of this Decree. The first Progress Report shall be due within 45 days of the close of the calendar year quarter during which this Decree is entered with subsequent reports due within 30 days of the close of each calendar year quarter thereafter. On or after the due date of the fourth quarterly report, Olympic may submit a written request to EPA to reduce the frequency of required Progress Reports from quarterly to semi-annually. After receiving such a request, EPA shall respond in writing to the request. EPA may, in its discretion,

1 either grant or deny the request, but shall not unreasonably deny the request. Each
2 Progress Report shall describe:

3 a. a summary of all actions taken to comply with this Consent Decree during the
4 reporting period including, but not limited to:

5 1. a summary of all of Olympic's efforts to comply with Olympic's Third
6 Party Damage Prevention Program attached as Exhibit 4 to the Appendix
7 including:

8 i. planned or completed corrective action to rectify any deficiencies
9 discovered during any audit completed during the reporting
10 period, or pertaining to any unresolved deficiency from any prior
11 audit, related to the Third Party Damage Prevention Program;

12 ii. any third party damage to the Pipeline; and

13 iii. a summary of Pipeline patrolling and inspection activities;

14 2. a summary of all of Olympic's efforts to comply with Olympic's
15 Management of Change Process attached as Exhibit 5 to the Appendix
16 including:

17 i. planned or completed corrective action to rectify any deficiencies
18 discovered during any audit completed during the reporting
19 period, or pertaining to any unresolved deficiency from any prior
20 audit, related to the Management of Change Process; and

21 ii. a summary of the application of the Management of Change
22 Process for all changes that Olympic was required to document
23 during the reporting period pursuant to Paragraph 13 of the
24 Appendix;

- 1 3. a summary of all of Olympic's efforts to comply with Olympic's
2 Equipment Inspection, Maintenance, and Repair Program attached as
3 Exhibit 6 to the Appendix including:
- 4 i. planned or completed corrective action to rectify any deficiencies
5 discovered during any audit completed during the reporting
6 period, or pertaining to any unresolved deficiency from any prior
7 audit, related to the Equipment Inspection, Maintenance, and
8 Repair Program;
- 9 ii. a summary of inspection and testing conducted; and
10 iii. a summary of equipment and parts repaired or replaced;
- 11 4. a summary of all of Olympic's efforts to comply with Olympic's
12 Controller and Employee Overview Training Program attached as
13 Exhibit 7 to the Appendix including:
- 14 i. planned or completed corrective action to rectify any deficiencies
15 discovered during any audit completed during the reporting
16 period, or pertaining to any unresolved deficiency from any prior
17 audit, related to the Controller and Employee Overview Training
18 Program;
- 19 ii. a summary of controller training conducted and number of
20 employees trained; and
21 iii. a summary of employee overview training conducted, as described
22 in Exhibit 7 to the Appendix, and the number of employees
23 trained.
- 24
- 25
- 26

- 1 b. any failure to meet the requirements of the Decree that occurred or remained
2 unresolved at any time during the reporting period, and the reasons for any such
3 failure to comply;
- 4 c. a summary of all actions taken or planned to correct failures to comply with this
5 Consent Decree during the reporting period;
- 6 d. a summary of all actions that Olympic anticipates taking during the next reporting
7 period to correct failures to comply with this Decree, including any known
8 possible delays or other problems that may affect compliance with the Decree and
9 Olympic's anticipated actions to resolve such delays or problems; and
- 10 e. the amount of stipulated penalties and interest, if any, accrued as of the last day
11 of the reporting period as a result of noncompliance with the Consent Decree,
12 including:
- 13 1. a description of each violation and the date noncompliance began and
14 ended, if applicable;
- 15 2. a summary of the calculation of the amount of the stipulated penalty for
16 each violation as of the last day of the reporting period;
- 17 3. a description of each violation for which Olympic has submitted to EPA
18 an unresolved *force majeure* claim or intends to submit a *force majeure*
19 claim pursuant to Section XII (*Force Majeure*) of this Consent Decree;
20 and
- 21 4. a description of each violation for which Olympic has submitted to EPA
22 an unresolved request for, or intends to submit a request for, discretionary
23 waiver of stipulated penalties pursuant to Paragraph 25 of this Consent
24 Decree.

13. Certifications. Whenever this Consent Decree or its Appendix requires Olympic to certify a report or any other submission of information, Olympic shall submit the following written statement with the submission, signed by a responsible corporate official:

I certify under penalty of law that this submission was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. I further certify under penalty of law that, to the best of my knowledge, based on my reasonable inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

IX. SITE ACCESS

14. From the date of Olympic's signature on this Consent Decree until its termination date as described in Section XXII (Termination), Olympic agrees to provide EPA and its contractors, and all persons performing actions at the direction of EPA, prompt access at all reasonable times to the Pipeline System, Pipeline System employees, and all property on which the Pipeline System is located, consistent with Olympic's right of access, for the purposes of conducting any activity related to this Consent Decree including, but not limited to, assessing, monitoring, or verifying compliance with the terms of this Consent Decree, and verifying any data or information submitted by Olympic pursuant to this Consent Decree.

15. Notwithstanding any provisions of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, pursuant to the CWA and any other applicable statutes or regulations.

X. STIPULATED PENALTIES

16. Olympic shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 17 and 18 for failure to comply with the requirements of this Consent Decree, unless excused pursuant to Section XII (*Force Majeure*). “Noncompliance” by Olympic shall include failure to complete the requirements of this Consent Decree within the time allowed in the Decree in accordance with all applicable requirements of law.

17. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraphs a-b below:

<u>Penalty Per Noncompliance</u>	<u>Period of Noncompliance</u>
\$500 per day or portion thereof	1st through 15th day
\$1,250 per day or portion thereof	16th through 30th day
\$2,500 per day or portion thereof	31st day and beyond

a. Failure to timely pay civil penalties in accordance with the terms of Section VII (Payment of Civil Penalties).

b. Failure to comply with the requirements in the Appendix other than reporting requirements.

18. The following stipulated penalties shall accrue per violation per day for any failure to comply with the reporting requirements specified in Section VIII (Reporting Requirements) and in the Appendix:

<u>Penalty Per Noncompliance</u>	<u>Period of Noncompliance</u>
\$250 per day or portion thereof	1st through 15th day
\$500 per day or portion thereof	16th through 30th day
\$1,250 per day or portion thereof	31st day and beyond

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1 19. All stipulated penalties shall begin to accrue on the day after the complete performance
2 is due or the day a violation occurs, and shall continue to accrue through the final day of
3 the correction of the noncompliance or completion of the activity. Nothing herein shall
4 prevent the simultaneous accrual of separate penalties for separate violations of this
5 Consent Decree.

6 20. All stipulated penalties accrued as of the last day of each reporting period owed to the
7 United States pursuant to this Section, and reported to the United States in Olympic's
8 Progress Report pursuant to Paragraph 12.e(1)-(2) of this Consent Decree, shall be due
9 and payable on the same day that the Progress Report for that reporting period is due.

10 21. If EPA determines that Olympic has failed to comply with a requirement of this Consent
11 Decree, or denies a written request for discretionary waiver of penalties, EPA may give
12 Olympic written notification of the same and describe the noncompliance. EPA may
13 send Olympic a written demand for the payment of penalties. Stipulated penalties shall
14 accrue as provided in Paragraph 19 of this Consent Decree, and be due and owing as
15 provided in Paragraph 20 of this Consent Decree, however, regardless of whether or not
16 EPA has notified Olympic of a violation. Olympic shall pay the stipulated penalties
17 specified in EPA's written demand within the earlier of the time required by
18 Paragraph 20 of this Consent Decree, or 30 days from the date of EPA's demand for
19 payment unless:

- 20 a. Olympic has submitted a written request for discretionary waiver of stipulated
21 penalties pursuant to Paragraph 25 of this Consent Decree and EPA has not
22 responded to the written request;
- 23 b. Olympic has submitted to EPA pursuant to Paragraph 31 of this Consent Decree a
24 written claim that a delay in compliance is caused by a *force majeure* event

1 regarding which EPA has not issued a decision pursuant to Paragraph 32 of this
2 Consent Decree; or

- 3 c. Olympic has submitted to EPA a written Notice of Dispute pursuant to
4 Paragraph 35 of this Consent Decree, in which case the date that payment of any
5 stipulated penalties is due shall be governed by Paragraph 22 of this Consent
6 Decree.

7 22. Penalties shall continue to accrue, as provided in Paragraph 19 of this Consent Decree,
8 during any dispute resolution period, but need not be paid until the following:

- 9 a. If the dispute is resolved by agreement or by a decision of EPA that is not
10 appealed to this Court, accrued penalties determined to be owing shall be paid to
11 EPA within 20 days of the date of the agreement or EPA's decision;
- 12 b. If the dispute is appealed to this Court, and the United States prevails in whole or
13 in part, Olympic shall pay all accrued penalties determined by the Court to be
14 owed to EPA within 60 days of the date of the Court's decision or order, except as
15 provided in Subparagraph c below;
- 16 c. If the District Court's decision is appealed by either Party, Olympic shall pay all
17 accrued penalties determined by the District Court to be owing to the United
18 States into an interest-bearing escrow account within 60 days of the date of the
19 Court's decision or order. Penalties shall be paid into this account as they
20 continue to accrue, at least every 30 days. Within 20 days of the date of the final
21 appellate court decision, the escrow agent shall pay the balance of the account to
22 EPA or to Olympic to the extent that they prevail.

23 23. The payment of stipulated penalties shall not affect Olympic's obligation to satisfy all of
24 the requirements of this Consent Decree.

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24. Nothing in this Consent Decree shall be construed as limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Olympic's failure to comply with the requirements of this Consent Decree or any applicable statutes or regulations.

25. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

XI. PAYMENT AND RELATED MATTERS

26. Olympic shall make the payments described in Section VII (Payment of Civil Penalties) by Fedwire Electronic Funds Transfer (EFT) to the United States Department of Justice, in accordance with current EFT procedures and instructions provided to Olympic by the Office of the United States Attorney for the Western District of Washington. The payments shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-06967, and shall specify that the payments are made toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 31 U.S.C. § 1321(s), § 4304 of Pub. L. No. 101-380, and 26 U.S.C. § 9509(b)(8). Any funds received after 11:00 a.m. Eastern Time shall be credited on the next business day. Olympic shall submit to the United States, as provided in Section XV (Notices and Submissions), notice of all payments made pursuant to this Paragraph within 10 Days of the date of the payment.

27. Olympic shall make the payments described in Section X (Stipulated Penalties) by EFT to the United States Department of Justice, in accordance with current EFT procedures and instructions provided to Olympic by the Office of the United States Attorney for the Western District of Washington. The payments shall reference the Civil Action Number

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assigned to this case and DOJ Number 90-5-1-1-06967, and shall specify that the payments are for stipulated penalties to be deposited into the United States Treasury pursuant to 31 U.S.C. § 3302. Any funds received after 11:00 a.m. Eastern Time shall be credited on the next business day. Olympic shall submit to the United States, as provided in Section XV (Notices and Submissions), notice of all payments made pursuant to this Paragraph within 10 Days of the date of the payment.

28. If Olympic fails to timely make any payment required pursuant to Section VII (Payment of Civil Penalties) or Section X (Stipulated Penalties), then, commencing on the day after payment is due, Olympic shall be liable to the United States for interest on the unpaid balance at the composite prime rate computed by, and published in the Wall Street Journal on the date that payment was due, and any costs of enforcement and collection incurred pursuant to the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001 *et seq.*

29. The United States shall be deemed a judgment creditor for purposes of collection of any penalties, interest, and expenses of enforcement and collection pursuant to this Consent Decree. Olympic specifically acknowledges that, pursuant to 26 U.S.C. § 162(f), penalty payments made pursuant to Sections VII (Payment of Civil Penalties) and X (Stipulated Penalties) of this Consent Decree shall not be deductible for federal tax purposes.

XII. *FORCE MAJEURE*

30. Olympic's obligation to comply with the requirements of this Decree shall only be deferred to the extent and for the duration that the delay is caused by *force majeure*. "*Force majeure*," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Olympic, or of any entity controlled by Olympic, that delays or prevents the performance of any obligation pursuant to this Consent Decree despite Olympic's best efforts to fulfill the obligation. The requirement that Olympic

1 exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any
2 potential force majeure event and best efforts to anticipate and address the effects of any
3 potential force majeure event (1) as it is occurring; and (2) following the potential force
4 majeure event, such that any delay is avoided or minimized to the greatest extent
5 possible. "*Force Majeure*" does not include financial inability to perform an obligation
6 required by this Consent Decree.

7 31. If any event occurs or has occurred that may delay the performance of any obligation
8 pursuant to this Consent Decree, whether or not caused by a *force majeure* event,
9 Olympic shall notify orally the Manager of the Emergency Response Unit, Office of
10 Environmental Cleanup, EPA Region 10, or his designee (ERU Manager), within
11 72 hours of when Olympic first knew, or in the exercise of reasonable diligence under
12 the circumstances should have known, that the event might cause a delay. Within 30
13 days thereafter, Olympic shall provide a written notice to EPA explaining the reasons for
14 the delay, the anticipated duration of the delay, all actions taken or planned to prevent or
15 minimize the delay, a proposed schedule for implementation of any measures planned to
16 prevent or mitigate the delay or the effect of the delay, and Olympic's rationale for
17 attributing such delay to a *force majeure* event if Olympic intends to assert such a claim.
18 Olympic shall include with any notice all available documentation supporting its claim
19 that the delay was attributable to a *force majeure* event, which Olympic may supplement
20 as additional documentation becomes available. Failure to provide written notice to EPA
21 within 30 days containing the required information, and including all available
22 documentation, shall preclude Olympic from asserting any claim of *force majeure* for
23 that event. EPA's ERU Manager may, in his unreviewable discretion, waive the
24 procedural requirements of this Paragraph. Olympic shall be deemed to know of any

1 circumstance of which Olympic, or any entity controlled by Olympic, knew or should
2 have known.

3 32. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event,
4 EPA will extend the time for performance of the obligations pursuant to this Consent
5 Decree that are affected by the *force majeure* event for such time as EPA deems
6 necessary to complete those obligations. An extension of the time for performance of the
7 obligations affected by the *force majeure* event shall not, of itself, extend the time for
8 performance of any other obligation. If EPA does not agree that the delay or anticipated
9 delay has been or will be caused by a *force majeure* event, EPA will notify Olympic in
10 writing of (1) EPA's decision regarding Olympic's *force majeure* claim; and (2) the
11 amount of any demand for the payment of stipulated penalties, pursuant to Paragraph 21
12 of this Consent Decree, related to the rejected *force majeure* claim. If EPA agrees that
13 the delay is attributable to a *force majeure* event, EPA will notify Olympic in writing of
14 the length of the extension, if any, for performance of the obligations affected by the
15 *force majeure* event. Any extension of time pursuant to this Section shall not be valid
16 unless the extension of time is confirmed in writing as provided in this Paragraph.

17 33. The dispute resolution procedures in Section XIII (Dispute Resolution) shall apply to any
18 dispute regarding EPA's decision regarding a *force majeure* claim that Olympic asserts
19 pursuant to Paragraph 31 of this Consent Decree. If Olympic elects to invoke the dispute
20 resolution procedures in Section XIII (Dispute Resolution), it shall do so no later than
21 20 days from the date of EPA's written decision regarding a *force majeure* claim
22 pursuant to Paragraph 32 of this Consent Decree.

XIII. DISPUTE RESOLUTION

34. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under, or with respect to, this Consent Decree. The procedures set forth in this Section, however, shall not apply to actions by the United States to enforce obligations of Olympic that Olympic has not timely disputed in accordance with this Section.

35. Any dispute that arises under, or with respect to, this Consent Decree shall in the first instance be the subject of good faith, informal negotiations between the Parties. The period for informal negotiations shall not exceed 21 days from the time the dispute arises, unless extended by written agreement of the Parties. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute.

36. If informal negotiations are unsuccessful, EPA's position shall control unless Olympic files with the Court a petition to resolve the dispute within 30 days after the conclusion of the informal negotiation period. Within 30 days after receiving a petition filed with the Court pursuant to this Paragraph, EPA may file a response. Except for disputes regarding *force majeure* claims, during the Court proceeding Olympic shall have the burden of proving by clear and convincing evidence that Olympic's proposed resolution of the issues in dispute better meets the requirements and objectives of this Consent Decree and the CWA. During any Court proceeding regarding *force majeure* claims, Olympic shall have the burden of proving by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the

1 delay, and that

2
3 Olympic complied with the requirements of Paragraphs 30 and 31, above. If Olympic
4 carries this burden, the delay at issue shall be deemed to be a *force majeure* event.

5 37. The invocation of dispute resolution procedures pursuant to this Section shall not extend,
6 postpone, or affect in any way any obligation of Olympic pursuant to this Consent
7 Decree that is not directly in dispute, unless EPA agrees otherwise. Stipulated penalties
8 with respect to the disputed matter shall continue to accrue but payment shall be stayed
9 pending resolution of the dispute as provided in Paragraph 22 of this Consent Decree.
10 Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day
11 of noncompliance with any applicable provision of this Consent Decree. If Olympic
12 does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as
13 provided in Section X (Stipulated Penalties).

14 **XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

15 38. Performance of all of Olympic's obligations pursuant to this Consent Decree, and
16 Olympic's obligations pursuant to the State Agreement discussed in Subparagraph I.F of
17 this Consent Decree resolves any civil claims of the United States against Olympic:

- 18 a. pursuant to Sections 309 and 311 of the CWA, 33 U.S.C. §§ 1319, 1321, as
19 specifically alleged in the Complaint; and
20 b. arising from the Incident for civil penalties pursuant to Section 3008(a) of RCRA,
21 42 U.S.C. § 6928(a), for violations of Section 3004 of RCRA, 42 U.S.C. § 6924,
22 of which the United States had knowledge on or before the date this Decree is
23 lodged.

24 39. Nothing in this Decree shall be construed to create any rights in, or grant any cause of

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1 action to, any person not a Party to this Consent Decree including, but not limited to,
2 Shell Pipeline Company LP fka Equilon Pipeline Company LLC. The United States
3 expressly reserves any and all rights, defenses, claims, demands, and causes of action
4 that it may have with respect to any matter, transaction, or occurrence relating in any
5 way to the Incident against any person not a Party hereto.

6 40. Notwithstanding any other provision of this Consent Decree, the United States retains all
7 authority and reserves all rights to take any and all response actions authorized by law.

8 41. This Consent Decree does not resolve, and the United States expressly reserves claims
9 against Olympic related to all other matters including, but not limited to, the following:

- 10 a. claims based on a failure by Olympic to meet a requirement of this Consent
11 Decree;
- 12 b. liability for damages for injury to, destruction of, or loss of natural resources, and
13 for the costs of any natural resource damage assessments;
- 14 c. criminal liability;
- 15 d. liability pursuant to regulations of the United States Department of
16 Transportation, Research and Special Programs Administration, Office of
17 Pipeline Safety or pursuant to the Pipeline Safety Act, 49 U.S.C.
18 §§ 60101 *et seq.*
- 19 e. liability pursuant to Subchapter I of OPA, 33 U.S.C. §§ 2701-2719; and
- 20 f. liability for any past, current, or future violation of federal or state law not
21 resolved pursuant to Paragraph 38 of this Consent Decree.

22 42. In any subsequent administrative or judicial proceeding initiated by the United States for
23 civil penalties or injunctive relief, Olympic shall not assert, and may not maintain, any
24 defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel,

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claim preclusion, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the resolution of the civil claims resolved pursuant to Paragraph 38 of this Consent Decree.

43. Olympic hereby covenants not to sue and agrees not to assert any claims related to the Incident, or response activities in connection with the Incident, against the United States pursuant to the CWA, OPA, or any other federal law, State law, or regulation including, but not limited to, any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund, or pursuant to any other provision of law.

44. The United States, by consenting to the entry of this Consent Decree, does not warrant or aver in any manner that Olympic's complete and satisfactory compliance with this Consent Decree will constitute or result in compliance with the CWA or any other federal law or regulation.

45. Nothing in this Consent Decree shall limit or modify the authority of the United States Department of Transportation pursuant to the Pipeline Safety Act, 49 U.S.C. § 60101, *et seq.*, and the regulations promulgated thereunder including 49 C.F.R. Parts 190 and 195. Nor shall anything in this Consent Decree limit or modify the provisions of such statute and regulations or orders issued thereunder.

XV. NOTICES AND SUBMISSIONS

46. Whenever, pursuant to the terms of this Consent Decree and Appendix, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless

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those individuals or their successors give written notice of a change. All notices and submissions shall be considered effective on receipt, unless otherwise provided.

AS TO THE UNITED STATES:

As to the United States Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
DOJ #90-5-1-1-06967

As to the U.S. Environmental Protection Agency:

Regional Counsel
Region X
United States Environmental Protection Agency
1200 Sixth Avenue
Mail Stop ORC-158
Seattle, Washington 98101

Manager, Emergency Response Unit
Office of Environmental Cleanup
Region X
United States Environmental Protection Agency
1200 Sixth Avenue
Mail Stop ECL-116
Seattle, Washington 98101

AS TO OLYMPIC PIPE LINE COMPANY:

Bobby J. Talley, President
Olympic Pipe Line Company
2201 Lind Avenue, S.W., Suite 270
Renton, Washington 98055

Angelo J. Calfo
Harold Malkin
Yarmuth Wilsdon Calfo PLLC
1201 Third Avenue
3080 Washington Mutual Tower
Seattle, Washington 98101-3000

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XVI. RECORD RETENTION/ACCESS TO INFORMATION

47. In addition to complying with any record-keeping requirements pursuant to applicable law and regulations, regardless of any contrary corporate retention policy, Olympic shall preserve and retain, during the pendency of this Consent Decree and for a minimum of six years after termination of this Consent Decree, all records, documents and information in the possession, custody, or control of Olympic, or which come into Olympic's possession, custody, or control, that relate in any manner to (1) the Incident; (2) repairs, modifications, or maintenance to the Pipeline System related to the Incident; or (3) implementation of this Consent Decree, including without limitation, reports, correspondence, data, or other documents or information related to the work performed pursuant to Section VI (Injunctive Relief) and the Appendix.

48. At any time prior to termination of this Consent Decree, and for six years thereafter, Olympic shall provide to the United States, within 30 days of the date of a request, all documents and information responsive to the request, within the possession, custody, or control of Olympic, described in the preceding paragraph.

49. Olympic may assert business confidentiality claims covering part or all of the documents or information provided to the United States pursuant to this Consent Decree to the extent authorized by, and in accordance with, 40 C.F.R. Part 2. Documents or information that EPA determines to be confidential will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Olympic that the documents or information are not confidential pursuant to applicable law, the public may be given access to such documents or information without further

notice to Olympic.

50. Olympic may assert that certain documents, records and other information are privileged pursuant to the attorney-client privilege or any other privilege recognized by federal law. If Olympic asserts such a privilege instead of providing documents, it shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Olympic. Nevertheless, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged, nor shall any claim of confidentiality be made with respect to such documents, reports, or information. If a claim of privilege applies only to a portion of a document, the document shall be provided to the United States in redacted form to mask the privileged information only.
51. Nothing in this Consent Decree shall limit the access and information-gathering authorities and rights of the United States pursuant to any federal law or regulation, including without limitation, related enforcement authorities pursuant to the CWA and OPA.

XVII. RETENTION OF JURISDICTION

52. This Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with the provisions of the Consent Decree, Rule 69 of the Federal Rules of Civil Procedure, and other applicable federal statutory authority.
53. This Court retains jurisdiction over both the subject matter of this Consent Decree and

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1 the Parties for the duration of the performance of the terms and provisions of this
2 Consent Decree for the purpose of enabling either of the Parties to apply to this Court at
3 any time for such further order, direction, and relief as may be necessary or appropriate
4 for the construction or modification of this Consent Decree, or to effectuate or enforce
5 compliance with its terms, or to resolve disputes in accordance with Section XIII
6 (Dispute Resolution).

7 **XVIII. MODIFICATION**

8 54. Modifications to the schedules for completion of injunctive relief pursuant to this
9 Consent Decree may be made without consent of the Court by written agreement
10 between Olympic and EPA. Except as provided in the preceding sentence, no material
11 modifications shall be made to this Consent Decree without written notification to and
12 written approval by the United States, Olympic, and the Court. Modifications that do not
13 materially alter Olympic's obligations pursuant to this Consent Decree may be made
14 without consent of the Court by written agreement between the Parties.

15 **XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

16 55. This Consent Decree shall be lodged with the Court for a period of at least 30 days for
17 public notice and comment in accordance with 28 C.F.R. § 50.7. The United States
18 reserves the right to withdraw or withhold its consent to the Consent Decree if the United
19 States becomes aware of facts or considerations that indicate to the United States that the
20 Consent Decree is inappropriate, improper, or inadequate. Olympic agrees not to oppose
21 entry of this Consent Decree or to challenge any provision of this Consent Decree unless
22 the United States has notified Olympic in writing that it no longer supports entry of the
23 Consent Decree. Olympic consents to entry of this Consent Decree without further
24 notice.

56. If for any reason the Court declines to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement shall not be used as evidence in any litigation.

XX. EFFECTIVE DATE

57. The effective date of this Consent Decree is that date upon which it is entered by the Court.

XXI. INTEGRATION/APPENDIX

58. This Consent Decree, Appendix A (Spill Prevention and Mitigation Requirements), and Exhibits 1-7 to Appendix A, constitute the final, complete and exclusive Consent Decree and understanding between the Parties regarding the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following Appendix and Exhibits are attached to and incorporated into this Consent Decree:

“Appendix A” is the Spill Prevention and Mitigation Requirements referenced in Paragraph 8 of this Consent Decree.

“Exhibit 1 to Appendix A” is ASME B31.4-2002 as defined in Subparagraph 1.b of Appendix A.

“Exhibit 2 to Appendix A” is ASME B31G-1991 as defined in Subparagraph 1.c of Appendix A.

“Exhibit 3 to Appendix A” is Olympic’s Form of ILI Repair Report.

“Exhibit 4 to Appendix A” is Olympic’s Third Party Damage Prevention Program referenced in Paragraph 11 of Appendix A.

“Exhibit 5 to Appendix A” is Olympic’s Management of Change Process referenced in Paragraph 13 of Appendix A.

“Exhibit 6 to Appendix A” is Olympic’s Equipment Inspection, Maintenance, and Repair Program referenced in Paragraph 15 of Appendix A.

“Exhibit 7 to Appendix A” is Olympic’s Controller and Employee Overview Training Program referenced in Paragraph 17 of Appendix A.

XXII. TERMINATION

59. Not earlier than five years after entry of this Consent Decree, this Decree shall be subject to termination, in whole or in part, on motion by either Party after Olympic fully satisfies the requirements of all or any part of this Consent Decree, except those obligations required pursuant to Section XVI (Record Retention/Access to Information). At such time as Olympic believes it has fulfilled all such requirements, Olympic shall so certify to the United States. Not earlier than 30 days after such certification, either party may apply to the Court for termination of all or any part of the Consent Decree. The obligations set forth in Section XIV (Effect of Settlement/Reservation of Rights) and Section XVI (Record Retention/Access to Information) shall survive termination of the Consent Decree as contractual obligations.

XXIII. SIGNATORIES/SERVICE

60. The Parties’ undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

61. Olympic shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service by mail on behalf of Olympic with respect to all matters arising under or relating to this Consent Decree.

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1 **XXIV. COSTS**

2 62. Each party shall bear its own costs and attorneys' fees in the action resolved by this
3 Consent Decree.

4 Dated this ____ day of _____, 2003.

5
6
7 UNITED STATES DISTRICT JUDGE

8 THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the Incident.

9 FOR THE UNITED STATES OF AMERICA

10
11 Date: _____

12 THOMAS L. SANSONETTI
13 Assistant Attorney General
14 Environment and Natural Resources Division
15 United States Department of Justice

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WAYNE T. AULT
Trial Attorney
United States Department of Justice
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FOR THE UNITED STATES ENVIRONMENTAL

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1 PROTECTION AGENCY

2
3
4 JOHN PETER SUAREZ
5 Assistant Administrator for
6 Enforcement and Compliance Assurance
7 United States Environmental Protection Agency

8
9 CHERYL T. ROSE
10 Attorney-Advisor
11 Office of Enforcement and Compliance Assurance
12 United States Environmental Protection Agency
13 Mail Code 2243A
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15 Washington, D.C. 20460
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L. JOHN IANI
Regional Administrator, Region X
United States Environmental Protection Agency

KEITH E. COHON
Assistant Regional Counsel, Region X
United States Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101

FOR OLYMPIC PIPE LINE COMPANY:

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1
2 BOBBY J. TALLEY
3 President
4 Olympic Pipe Line Company
5 2201 Lind Avenue, S.W., Suite 270
6 Renton, Washington 98055

7 Agents Authorized to Accept Service on Behalf of Olympic Pipe Line Company:

8 ANGELO J. CALFO
9 HAROLD MALKIN
10 Yarmuth Wilsdon Calfo PLLC
11 1201 Third Avenue
12 3080 Washington Mutual Tower
13 Seattle, Washington 98101-3000

14 Counsel for Olympic Pipe Line Company
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